

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WHIRLPOOL CORPORATION,

Plaintiff,

v.

SPECTACULAR PRODUCTS, LLC
and WILLIAM LONG,

Defendant.

§
§
§
§
§
§
§
§
§
§
§

Civil Action No. 2:16-cv-86

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff Whirlpool Corporation (“Whirlpool”), and for its Complaint for Patent Infringement of United States Patent No. 7,000,894 (‘894 Patent) against William Long and Spectacular Products, LLC, states as follows:

PARTIES

1. Plaintiff Whirlpool is a corporation organized and existing under the laws of the state of Delaware with a principal place of business at 2000 North M-63, Benton Harbor, Michigan.

2. Defendant Spectacular Products, LLC is a limited liability company organized and existing under the laws of the state of New York. It is assigned DOS ID No. 3928048 by the New York Department of State and has a principal place of business at 950-3 Old Medford Ave., Medford, New York.

3. Defendant William Long is a citizen of the state of New York, residing in New York. He is the owner and operator of Spectacular Products, LLC and is responsible for sales for

the company. Long personally participated in offers for sale and sales of the accused infringing products and in procuring the accused infringing products imported into the United States for Spectacular Products, LLC. Unless otherwise noted, Spectacular Products, LLC and William Long will hereinafter be referred to collectively as “Spectacular.”

JURISDICTION, VENUE & FURTHER ALLEGATIONS

4. The action arises under the patent laws of the United States, Title 35 United States Code. The jurisdiction of this Court is proper under Title 35 U.S.C. § 271, *et seq.* and Title 28 U.S.C. §§ 1331, 1332, and 1338.

5. Spectacular is a seller of replacement water filters for refrigerators.

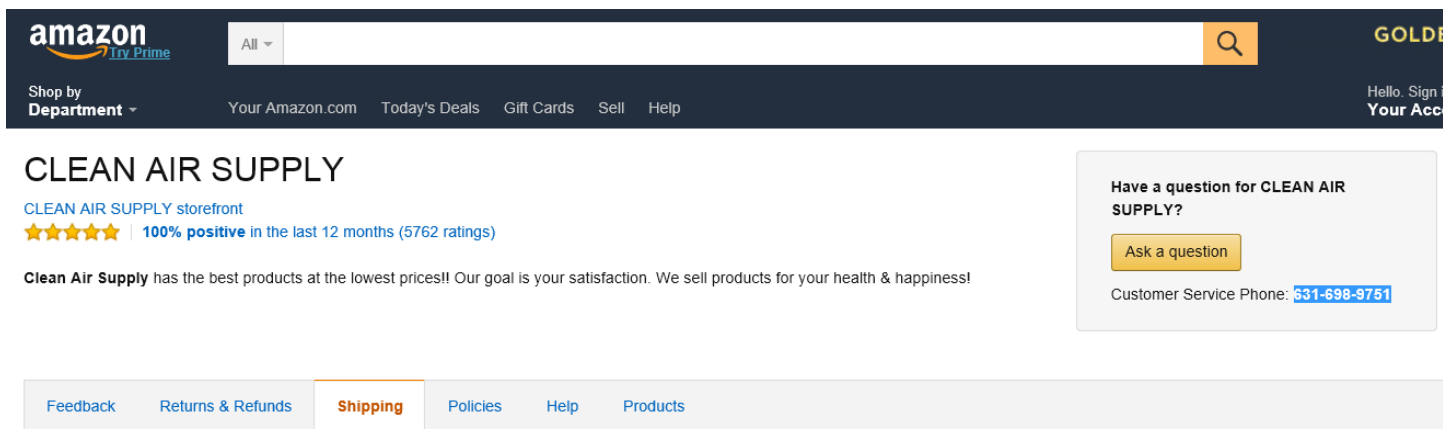
6. Spectacular has offered for sale and sold throughout the United States Whirlpool-compatible replacement water filters that infringe the ‘894 Patent (a copy of the ‘894 Patent is appended as Exhibit A).

7. Water filters that infringe the ‘894 Patent include Model No. RFC0800A, which is a copy of the Whirlpool “Filter 3” patented product, and Model No. RFC1700A, which is a copy of the Whirlpool “Filter 1” patented product. Spectacular has offered for sale and sold such infringing products through online retail outlets such as Amazon.com and/or ebay.com.

8. William Long, individually, has been directly engaged in the order and receipt of infringing products. A copy of the shipment spreadsheet of May 6, 2015, demonstrating Mr. Long’s direct involvement in procuring six hundred-eighty (680) RFC0800A replacement water filters for retail sale by Spectacular Products LLC, is appended as Exhibit B.

9. On Amazon.com, Spectacular operates a storefront by the name of “Clean Air Supply”.

10. The Amazon site for Clean Air Supply provides shipping information which includes a Customer Service Telephone Number of 631-698-9751 as shown from the below screen capture:



11. The telephone number for customer service contact as displayed for Clean Air Supply on Amazon.com is identical to the telephone number assigned to and used by Spectacular. For example, the telephone number for Clean Air Supply as provided on Amazon.com is the same telephone number shown on the shipment spreadsheet (Exhibit B).

12. In describing the benefits of offering and selling products via Amazon.com, the web based superstore touts its mass marketing status as follows:

Reach Hundreds of Millions of Customers

Access a massive audience of confident customers—in the U.S. alone, Amazon has over 95 million monthly unique visitors. Benefit from a brand that ranks #1 in reputation as determined by a 2014 Nielsen Company survey.¹

(http://www.amazon.com/b/ref=nav_nav_cs_sell?_encoding=UTF8&ld=AZUSSOA-sell&node=12766669011)

13. Spectacular purposefully chose to sell its products, including the infringing water filters, on Amazon.com so as to reach a large number of prospective customers and to sell directly to customers located throughout the United States, including customers residing within the Eastern District of Texas.

14. Spectacular operates a storefront on ebay.com by the name of “iaqsupply”. On ebay.com, Spectacular offers for sale and sells infringing products such as RFC0800A filters and RFC1700A filters.

15. ebay.com states that it currently has one hundred, fifty-nine million (159,000,000) active buyers (<https://www.ebayinc.com/stories/news/infographic-the-business-of-ebay>).

16. In July of 2013, eBay, Inc. reported that its sales within the US market reached \$7.3 billion for the 2nd quarter of the year. Internet Retailer, *eBay’s U.S. sales climb 16% in Q2*, (July 17, 2013) (<https://www.internetretailer.com/2013/07/17/ebaysussalesclimb16q2>).

17. In April of 2014, eBay, Inc. reported worldwide sales of \$20.195 billion for the 1st quarter of the year, of which 41% (\$8.28 billion) were sales made within the United States. Internet Retailer, *eBay’s U.S. marketplace sales rise 2% in Q1* (April 22, 2015) (<https://www.internetretailer.com/2015/04/22/ebays-us-marketplace-sales-rise-2-q1>)

18. For the 2014 financial year, eBay, Inc. reported to the United States Security and Exchange Commission that it derived revenues of \$8,495,000,000 from its United States sales alone. *eBay, Inc., Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended December 31, 2014 (Form 10K), page F-19*.

19. Spectacular purposefully chose to offer for sale on and to sell through ebay.com so as to reach a large number of prospective customers within the United States and within Texas, including the Eastern District of Texas. A screen print of Spectacular’s offer of

RFC1700A filters identified as “Whirlpool W10295370” made on ebay.com and printed on December 15, 2015 is appended as Exhibit C.

20. On July 13, 2015, Spectacular’s Clean Air Supply storefront on Amazon.com, sold to Whirlpool a replacement refrigerator water filter, RFC0800A, Amazon Order #115-2368028-1974617. The RFC0800A filter infringes at least Claim 1 and Claim 4 of the ‘894 Patent. Amazon provided Whirlpool the name of William Long as the person operating the Clean Air Supply storefront and, further, provided Mr. Long’s email address as registered with Amazon: iaqsupply@yahoo.com. On August 11, 2015, correspondence was sent to Mr. Long demanding that Spectacular cease and desist in the sales of replacement water filters infringing the ‘894 Patent. A copy of the email and enclosed cease and desist letter to Mr. Long (without attachments) is appended as Exhibit D hereto.

21. Spectacular did not respond to the correspondence of August 11, 2015, and has continued to offer for sale and to sell RFC0800A and RFC1700A replacement water filters which infringe the ‘894 Patent.

22. On December 16, 2015, Spectacular fulfilled Amazon Order #108-5200456-2913819 in selling replacement water filter, RFC1700A. Christa Hicks, who placed the order and received delivery of the replacement water filter on behalf of Melissa R. Smith, resides within the Eastern District of Texas. Appended as Exhibit E is a copy of the Order Confirmation received by Ms. Hicks from Amazon.com.

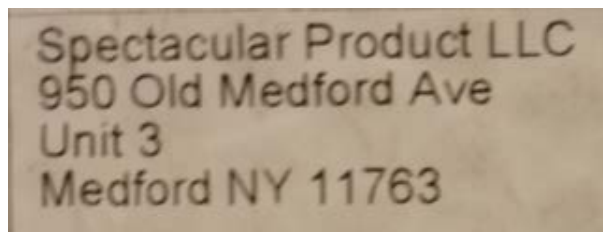
23. The RFC1700A replacement water filter ordered on December 16, 2015 and delivered by Spectacular infringes at least Claim 1 and Claim 4 of the ‘894 Patent. A copy of the shipping label on the mailed package delivering the RFC1700A filter as received from

Spectacular in fulfillment of Amazon Order #108-5200456-2913819 is appended as Exhibit F, and photographs of the RFC1700A filter delivered are appended as Exhibit G.

24. On December 16, 2015, Spectacular fulfilled Amazon Order #108-3789907-1620221 in selling replacement water filter, RFC0800A. Christa Hicks, who placed the order and received delivery of the replacement water filter on behalf of Melissa R. Smith, resides within the Eastern District of Texas. Appended as Exhibit H is a copy of the Order Confirmation received by Ms. Hicks from Amazon.com.

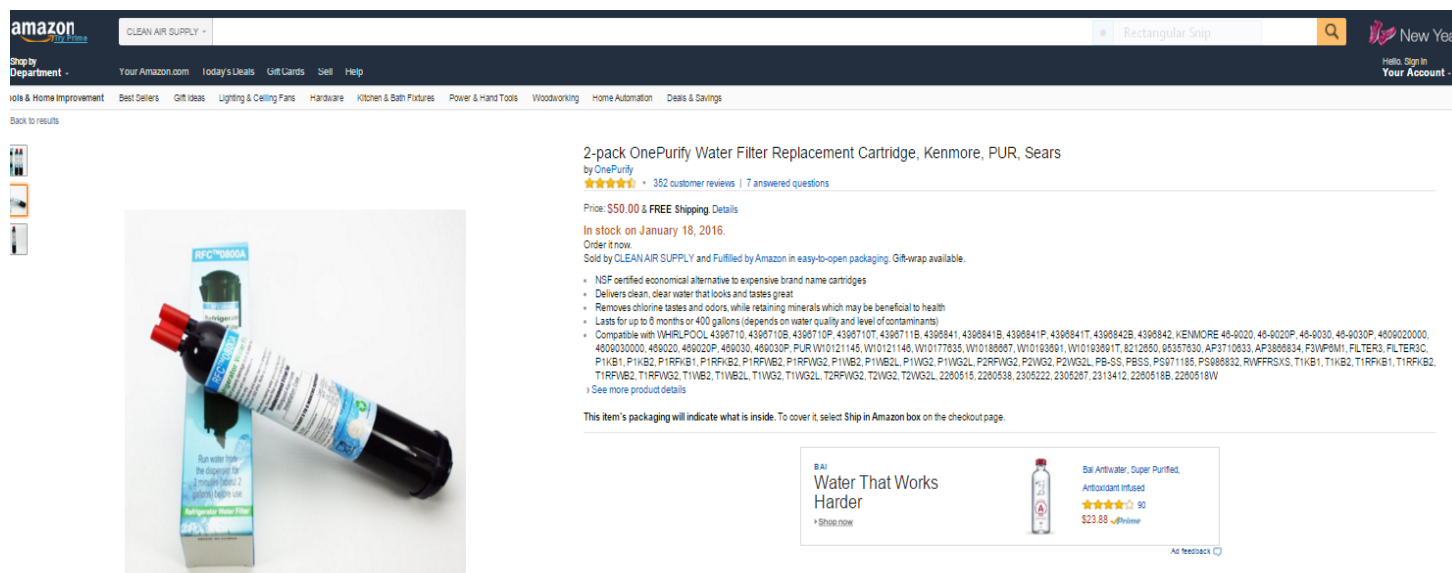
25. The RFC0800A replacement water filter ordered on December 16, 2015 and delivered by Spectacular infringes at least Claim 1 and Claim 4 of the '894 Patent. A copy of the shipping label on the mailed package delivering the RFC0800A filter as received from Spectacular in fulfillment of Amazon Order #108-3789907-1620221 is appended as Exhibit I, and photographs of the RFC0800A filter delivered are appended as Exhibit J.

26. The RFC0800A and RFC1700A filters received in December 2015 in fulfillment of Amazon Order #108-3789907-1620221 and Amazon Order #108-5200456-2913819, each were delivered in separate envelopes, both having a shipping label showing the following return address (Exhibits E & H):



27. Spectacular has offered for sale and sold Whirlpool-compatible refrigerator water filters that infringe U.S. Patent No. 7,000,894, such as RFC0800A filters and RFC1700A filters, to residents and citizens of Texas who reside within this district.

28. Spectacular continues to offer for sale and to sell infringing replacement water filters by way of its [Amazon.com](http://www.amazon.com) storefront, Clean Air Supply. The screen capture from a Clean Air Supply advertisement on [Amazon.com](http://www.amazon.com) made on January 15, 2015 shows Clear Air Supply advertising the sale of RFC0800A replacement water filters, said screen capture print made from the webpage found at http://www.amazon.com/2-pack-OnePurify-Replacement-Cartridge-Kenmore/dp/B00MQ60KOC/ref=sr_1_4?m=A11X99NTDQPUM7&s=appliances&ie=UTF8&qid=1452894130&sr=14&keywords=clean+air+supply&refinements=p_6%3AA11X99NTDQPUM7:



29. The Court has personal jurisdiction over Spectacular because it selected an internet sales presence specifically designed to reach millions of prospective customers including, in particular, customers who are citizens of and/or reside within Texas, including the Eastern District of Texas, and, further, it has made actual sales of infringing water filters to customers in the state of Texas, including the Eastern District of Texas, thereby harming Whirlpool by offering to sell and/or selling infringing products in this district.

30. Venue is proper in this district pursuant to Title 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because Spectacular has committed acts of infringement in this judicial district.

COUNT I
Infringement of U.S. Patent No. 7,000,894

31. Whirlpool restates and incorporates by reference paragraphs 1 through 9 as if fully stated herein.

32. On February 21, 2006, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 7,000,894 (“the ‘894 patent”) entitled “Fluidic Cartridges and End Pieces Thereof.” On March 3, 2014, the USPTO issued an ex parte reexamination certificate for the ‘894 patent. The ex parte reexamination certificate is found within Exhibit A.

33. Whirlpool is the owner by assignment of the entire right, title and interest in and to the ‘894 patent, including the right to sue and recover past, present, and future damages for infringement.

34. Whirlpool manufactures products that practice the ‘894 patent, including Whirlpool “Filter 1” and “Filter 3” refrigerator water filters, and marks such products with the ‘894 patent.

35. The validity and enforceability of the ‘894 patent has been recognized and acknowledged in Consent Judgments entered by this Court in the patent infringement cases captioned: *Whirlpool Corporation v. Air 1 Supply, Inc.*, Civil Action No. 2:15-cv-1640-JRG (Document 6); *Whirlpool Corporation v. Global Parts Supply, LLC d/b/a Pandora’s OEM Appliance Parts*, Civil Action No. 2:15-cv-1563-JRG (Document 7); *Whirlpool Corporation v. JJ Wholesale Group Inc. d/b/a Bob’s Filters and Joseph Spira*, Civil Action No. 2:15-cv-1565-

JRG (Document 11); and *Whirlpool Corporation v. Zipras, Inc.*, Civil Action No. 2:cv-01636-JRG (Document 7).

36. Spectacular has been infringing the '894 patent by importing, offering for sale and/or selling water filters covered by at least claims 1 and 4 of the '894 patent in violation of Title 35, U.S.C. § 271(a), *et seq.*

37. William Long is the owner and operator of Spectacular Products, LLC, and he has personally participated in offering for sale and/or selling the infringing replacement water filters on behalf of Spectacular Products, LLC.

38. The offers for sale and sales of infringing replacement water filters by Spectacular were without permission, authority, or license from Whirlpool. Further acts of infringement, unless enjoined by this Court, will continue to damage Whirlpool and cause irreparable harm to Whirlpool.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Whirlpool respectfully requests the following relief:

- a. That the Court enter a judgment that Spectacular has infringed the '894 patent;
- b. That the Court enter a judgment that the '894 patent is not invalid;
- c. That the Court enter a judgment that the '894 patent is enforceable;
- d. That the Court enter a permanent injunction preventing Spectacular and its respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from engaging in infringing activities with respect to the '894 patent;
- e. That the Court award damages for the infringement to which Whirlpool is entitled;

- f. That the Court award interest on the damages; and
- g. For any and all such other relief as this Court may deem appropriate.

Dated: January 27, 2016.

Respectfully submitted,

By: /s/

Melissa R. Smith (TX State Bar No. 24001351)
GILLAM & SMITH, LLP
303 S. Washington Ave.
Marshall, TX 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257
Email: Melissa@gillamsmithlaw.com

OF COUNSEL:

Jeffrey D. Harty (IA AT0003357)
Glenn Johnson (IA AT0003856)
Ryan W. Leemkuil (IA AT0011129)
NYEMASTER GOODE, P.C.
700 Walnut Street, Ste. 1600
Des Moines, IA 50309-3899
Telephone: (515) 283-8038
Facsimile: (515) 283-3108
Email: jharty@nyemaster.com
Email: gjohnson@nyemaster.com
Email: rwleemku@nyemaster.com

Attorneys for Plaintiff
WHIRLPOOL CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service, on January 27, 2016.

/s/ Melissa Smith
Melissa Smith